

CHAPTER 27

STOCKBRIDGE-MUNSEE TRIBAL LAW

REVENUE ALLOCATION PLAN

Section 27.1 Purpose and Resolution.

This Revenue Allocation Plan ("Plan") was adopted pursuant to Resolution No. 1461-95 and Section VI of the Stockbridge-Munsee Tribal Gaming Ordinance. This Plan shall govern the allocation of available net revenues from the tribally owned Mohican North Star Bingo and Casino ("Casino") including per capita distributions to qualified members of the Stockbridge-Munsee Community.

Section 27.2 Policy

(A) This plan shall comply with the Indian Gaming Regulatory Act ("IGRA") of 1988 [25 U.S.C. Section 2701] and all other applicable federal law. The Stockbridge-Munsee Community shall use revenues generated by tribal gaming establishments primarily to strengthen tribal government, tribal self sufficiency and to support tribal economic development. The Stockbridge-Munsee Tribal Government shall insure that tribal government operations and programs and tribal economic development shall receive the necessary financial support from net gaming revenues prior to distributing such revenues for other purposes.

(B) The Stockbridge-Munsee Community is committed to providing for the long range security of itself and its tribal members. Accordingly, the Stockbridge-Munsee Community shall insure that net gaming revenues are allocated toward investments, programs and projects that impact not only present needs, but also anticipate future needs. In addition, the Stockbridge-Munsee Community shall ensure that investments, programs and projects funded by net gaming revenues are aimed toward improving tribal conditions and the life opportunities of tribal members from generation to generation.

(C) The Stockbridge-Munsee Community also retains the inherent sovereign right to determine the best interests of its minor tribal members by providing for their future welfare by placing monies into trust for the benefit of those minor tribal members. The Stockbridge-Munsee Community shall provide for the future of minors while encouraging tribal member parents to provide for the immediate living needs of their children as is their responsibility. In cases of hardship or for other reasonable justification, the Stockbridge-Munsee Tribal Council shall allow for payments, in the name of minor tribal members, as may be necessary, from any trust income held for minor tribal members.

(D) In addition, the Stockbridge-Munsee Community is committed to the education of its children. Specifically, the Community seeks to increase the high school graduation rates of its tribal members and encourage its tribal members to pursue degrees in colleges, universities or vocational schools. Accordingly, the Community shall tailor its distribution of per capita payments to minor tribal members so as to encourage these minors to complete their schooling.

Section 27.3 Use of Net Gaming Revenues: Tribal Government Operations and Programs

(A) The Tribal Council hereby allocates THIRTY-FIVE (35%) of net gaming revenues in order to provide supplemental funding for tribal governmental operations and programs.

(1) If it deems it necessary, the Tribal Council shall have the authority to revise and increase the percentage of net gaming revenues allocated to funding the tribal government operations and programs. The percentage increase shall be drawn from the percentage set by Section 27.4. The Tribal Council shall not decrease the allocated percentage set by this Section to provide for per capita payments authorized under Section 27.7. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior.

(2) Any net gaming revenues allocated to funding for tribal governmental operations and programs that have not been expended as of the last date of this fiscal year may, at the Tribal Council's discretion after review of allocation performance, be allocated to the purposes set forth in either Sections 27.4-27.7 or be allocated to funding for tribal governmental operations and programs for the subsequent fiscal year, or be allocated into 50% long-term investment and 50% into tribal government operations for the subsequent fiscal year.

(B) Tribal governmental operations and programs to be supplementarily funded by net gaming revenues under this Section shall include, but shall not be limited to, the following: Tribal Council, tribal administration, capital improvements to tribal offices, tribal public works program, tribal planning program, tribal enrollment program, tribal housing improvement program, tribal social services program, tribal community health representative, tribal health services, Indian Health Services clinic, Indian Child Welfare Act tribal program, tribal clean-up program, tribal education program, tribal parenting program, summer youth workers' program, school food service program, tribal library, tribal recreation program, tribal elderly program and tribal cultural programs. Additionally, supplemental funding for Constitutional revision and a tribal judicial system, including tribal court system, tribal prosecutor, tribal police department and other tribal government operations and programs being developed and hereafter developed and added to this provision by amendment.

(C) At least sixty days prior to the commencement of each new fiscal year, the Tribal Council shall receive budget reports and requests from each tribal governmental operation and program listed in Section 27.3 (B). The budget reports shall detail at a minimum: past fiscal year revenues, projected revenues, revenue sources, including the amount of net revenues derived from gaming enterprises, past fiscal year expenditures and projected expenditures, together with a detailed accounting for expenditures. The budget reports shall also include budget requests including requests for supplemental funding from net gaming revenues allocated to funding for tribal governmental operations and programs.

(D) The Tribal Council shall, after receiving all budget reports and requests under this Section, allocate those funds designated for tribal governmental operations and programs. The Tribal Council shall be the sole decision making body as to any actions taken upon budget reports and requests and as to the allocation of funds designated for tribal government operations and programs.

(E) The Tribal Council or its appointed agent shall disburse those monies allocated to tribal governmental operations and programs in accordance with the fiscal year budget referenced in paragraph (D) above. Any disbursements made hereunder shall be received by the receiving tribal governmental operation or program and handled in a manner consistent with the operations or program's generally accepted accounting methods.

(F) Prior to the adoption of the fiscal year budget, the Tribal Council shall review the budget reports and requests required in paragraph C above for the prior fiscal year, and any other reports prepared in accordance with generally accepted accounting methods, to determine the actual amount of monies expended on tribal governmental operations and programs in the prior fiscal year together with the percentage of total net gaming revenues allocated to tribal governmental operations and programs in the prior fiscal year.

Section 27.4 Use of Net Gaming Revenues: Tribal Economic Development.

(A) The Tribal Council hereby allocates THIRTY-FIVE (35%) of net gaming revenues in order to provide funding for tribal economic development.

(1) If it deems it necessary, the Tribal Council shall have the authority to revise and increase the percentage of net gaming revenues allocated to funding the tribal government operations and programs. The percentage increase may be drawn from the percentage set by Section 27.3. The Tribal Council shall not decrease the allocated percentage set by this Section to provide for per capita payments authorized under Section 27.7. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior.

(2) Any net gaming revenues allocated for the funding of economic development that have not been expended as of the last date of this fiscal year may, at the Tribal Council's discretion after review of allocation performance, be allocated to the purposes set forth in either Sections 27.3 - 27.7 or be allocated to funding for tribal economic development for the subsequent fiscal year or be allocated into 50% long-term investments and 50% into tribal economic development for the subsequent fiscal year.

(B) "Tribal economic development" shall include investment of net gaming revenues. Investments of net gaming revenues allocated to tribal economic development shall be made pursuant to an investment policy to be adopted by resolution of the Tribal Council.

(C) Tribal Council shall have the authority to appropriate and expend net gaming revenues allocated to tribal economic development to fund proposed tribal economic development

projects. Tribal economic development proposals shall be considered in accordance with existing procedures. The Tribal Council shall thereafter allocate those net gaming revenues designated for tribal economic development to the proposed economic development project as it deems necessary and feasible.

(D) The Tribal Council shall have the authority to appropriate and expend net gaming revenues allocated to tribal economic development to supplement funding for on-going tribal economic development enterprises, including Land Acquisition and the Tribal Revolving Loan program. Requests for supplemental funding for the Stockbridge-Munsee Community's on-going businesses and enterprises shall be considered in accordance with existing procedures. The Tribal Council shall thereafter allocate those net gaming revenues designated for tribal economic development to the on going business or enterprise as it deems necessary and feasible.

Section 27.5 Use of Net Gaming Revenues: General Welfare of the Stockbridge-Munsee Community and its Tribal Members.

(A) The Tribal Council hereby allocates THIRTY (30%) of net gaming revenues in order to provide supplemental funding for the general welfare of the Stockbridge-Munsee Community and its tribal members, including donations to charitable organizations. Such funding is to include new initiatives and to replace and/or supplement existing programs.

(1) If it deems it necessary, the Tribal Council shall have the authority to revise and increase the percentage of net gaming revenues allocated to funding the general welfare of the Stockbridge-Munsee Community and its tribal members. The percentage increase may be drawn from the percentage set by Sections 27.3 and 27.4. This percentage may be decreased, at the Council's discretion, after budget review, to fund any per capita payment authorized under Section 27.7 of this plan. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior.

(2) Any net gaming revenues allocated to funding for general welfare that have not been expended as of the last date of this fiscal year may, at the Tribal Council's discretion after review of allocation performance, be allocated to the purposes set forth in either Sections 27.3, 27.4, 27.5, or 27.7, or be allocated to funding for the general welfare for the subsequent fiscal year, or be allocated 50% into long-term investments and 50% into general welfare for the subsequent fiscal year.

Section 27.6 Donations to Charitable Organizations.

(A) The Tribal Council may allocate a maximum of ONE PERCENT (1%) from General Welfare, section 27.5, in order to provide funding for donations to charitable organizations.

(1) Any revenues allocated to funding for donations to charitable organizations that have not been expended as of the last date of this fiscal year may, at the Tribal Council's discretion, be allocated to the purposes set forth in Section 27.7 or be allocated to funding for donations to charitable organizations for the subsequent fiscal year, or be allocated

50% into long-term investments and 50% into charitable organizations for the upcoming fiscal year.

(B) The Tribal Council shall consider requests for charitable donations under this section. The Tribal Council may show a preference to such charitable donation requests that benefit tribal members or Native American/Indian people generally.

Section 27.7 Use of Net Gaming Revenues: Individual Per Capita Payments

(A) In order to advance the personal health, safety and welfare of qualified tribal members, the Tribal Council shall review at least 60 days prior to the commencement of the upcoming fiscal year the income, expenses and management of tribal gaming operations, and after due consideration of the need to fund tribal government operations and programs, and the other areas outlined above, shall decide whether to make any changes to the Revenue Allocation Plan providing for appropriate percentage allocation of tribal gaming revenues within the annual budget of the Tribe for the upcoming fiscal year.

The Council shall also determine what amount, if any, of the revenues allocated to general welfare purposes, section 27.5, shall be appropriated for distribution as per capita payments for the upcoming fiscal year.

If a majority of the Tribal Council votes to permit a per capita payment, such vote shall specify the percentage allocation to be used for such payment. The percentage allocation shall be divided into equal shares and paid to all qualified tribal members. The Tribal Council shall be the exclusive forum for disputes concerning the allocation of net gaming revenues and the distribution of per capita payments.

In accordance with 25 C.F.R. 290, and for purposes of this Plan, "per capita payment" shall mean those payments made or distributed to all enrolled tribal members which are paid directly from the net revenues of any gaming activity; no other commonly accepted or used definition of the term "per capita payment" affects the use of the term herein.

(1) If Tribal Council approves a per capita payment, per capita payments to qualified tribal members shall be made not later than November 30 or the first business day thereafter, of the subsequent fiscal year. The Tribal Council hereby reserves the right to amend this provision to provide for an alternative distribution schedule for per capita payments, if per capita payments are approved.

(2) All net gaming revenues designated for distribution as per capita payments shall be deposited, when received by the Tribe from the Casino, into a low-risk interest bearing account with a federally insured financial institution prior to distribution.

(3) Any net gaming revenues allocated to per capita payments that have not been expended as of the last date of this fiscal year may, at the discretion of the Tribal Council, be allocated into 50% long-term investments and 50% into the purposes set out in sections 27.3, 27.4, and 27.5 (in equal percentages) for the subsequent fiscal year.

(B) "Qualified tribal member" for the purposes of this Plan, shall mean those individuals who are alive and duly enrolled in the Stockbridge-Munsee Tribe pursuant to Article III of the Tribe's Constitution as of June 1 of the year in which the per capita payment is paid. Per capita payments to minor qualified tribal members (as defined in Section 27.8 (C) (1) below) shall be made in accordance with the provisions of Section 27.7(C) (3) below.

(1) Newborns. All babies born after March 1, but prior to June 1, and whose applications for enrollment have been properly submitted to the Land and Enrollment Office by July 31 shall be eligible for the payment from this fiscal year. Payment shall be paid to the Minors' Trust Fund upon completion of the enrollment process. All provisions of subsection (C) hereunder shall apply.

(2) Incompetents.

(a) The Tribal Council shall place into trust a low-risk interest bearing account in a federally insured financial institution it finds satisfactory, the per capita payments, or any portion or percentage thereof, of any individual who is declared incompetent by a court of competent jurisdiction. The Tribal Council or its appointed agent shall make disbursements to the court appointed guardian for the purposes of providing for the incompetent's health, education or welfare on a case by case basis upon a demonstration to the satisfaction of the Tribal Council based upon the following criteria:

(i) that the person requesting the withdrawal of monies on behalf of the legal incompetent is the court appointed guardian of the legal incompetent in question, and,

(ii) that the money will be used for the personal health, safety, welfare, or educational needs of the incompetent.

(b) Denial of per capita payments by the Tribal Council shall be made in the event of failure of the legal guardian to demonstrate to the satisfaction of the Tribal Council that criteria (i) – (ii) have been met.

(c) The Tribal Council or its appointed agent may also require that the petitioning guardian submit receipts of expenditures made from funds disbursed hereunder before any future disbursements are made. The establishment of a regular monthly allowance for any individual declared legally incompetent from the proceeds of any per capita payment placed into trust under this section shall remain at the discretion of the Tribal Council.

(C) In order to provide for the future safety and well being of the children of the Stockbridge-Munsee Community, the Tribal Council hereby authorizes that per capita payments designated for minor qualified tribal members shall be deposited into a "Minors' Trust Fund" established in a low-risk interest bearing account in a federally insured financial institution, and in accordance

with any trust agreement the Tribe may have with a trustee. If the minor qualified tribal member will be eligible to receive the per capita payment directly by the end of the upcoming fiscal year, the Tribal Treasurer may instead deposit the per capita payment into a federally insured certificate of deposit, if it is to the financial benefit of the minor qualified tribal member.

(1) A "minor qualified tribal member" means an individual who is a qualified tribal member as defined in Section 27.7 (B) except that he or she has not reached the age of EIGHTEEN (18) as of the last date of this fiscal year.

(2) Payments into the Minors' Trust Fund shall be deposited into the respective accounts of the minor qualified tribal member. Account balance statements shall be available to the participant, parent, parents or legal guardian of the minor qualified tribal member.

(3) Each minor qualified tribal member shall receive one trust account maturity payment of the monies accumulated in the Minors' Trust Fund, including interest, for that particular minor qualified tribal member, provided that the minor qualified tribal member has attended the financial planning/investment workshops pursuant to the Children's Trust Agreement, and:

(a) Upon reaching the age of EIGHTEEN (18), provided that the tribal member has graduated high school or obtained a G.E.D., or,

(b) Upon graduating from high school or obtained a G.E.D. and the tribal member is between the ages of EIGHTEEN (18) and TWENTYONE (21), or,

(c) Upon reaching the age of TWENTYONE (21) regardless if the tribal member has graduated high school or obtained a G.E.D.

(d) Application for maturity payment shall be approved by the Tribal Council or its appointed agent, upon sufficient evidence demonstrating the requirements of Section 27.7(C)(3) have been satisfied,

(4) The Tribal Council or its appointed agent shall have the authority to disburse proceeds of any funds placed into the Minors' Trust Fund on behalf of a minor qualified tribal member in extenuating circumstances, on a case by case basis, and upon demonstration to the satisfaction of the Tribal Council based upon the following criteria:

(a) Any requests for such disbursements shall be made in writing to the Tribal Council,

(b) that the personal health, safety, welfare or educational needs of the minor could be drastically impaired or affected in the absence of such payments,

(c) that any and all alternative funding resources have been exhausted, and,

(d) provision of documentation from qualified medical personnel or education institutions establishing that a dire health, safety, welfare or educational need exists.

(5) Denial of per capita payments by the Tribal Council shall be made in the event of failure of the parents or legal guardians to demonstrate to the satisfaction of the Tribal Council that criteria (a) – (d) have been met.

(6) The Tribal Council or its appointed agent may also require that petitioners submit written receipts of expenditures made from funds disbursed hereunder before any future disbursements are made.

(7) In the event the minor qualified tribal member dies before receiving the one trust account maturity payment of the monies accumulated in the Minors' Trust Fund, the monies shall go the Tribe's education fund, the Tribe's burial trust fund, and the Tribe's health fund.

(D) Any person enrolling in the Stockbridge-Munsee Community after June 1, 1995, except as otherwise specified herein (see Section 27.7 (B)) shall not be entitled to any back payments of per capita proceeds. The first per capita payment to a new tribal member shall be on the first date of a regularly scheduled payment after his or her qualified status is confirmed in accordance with Section 27.7 (B).

(E) Federal Tax. The Tribal Council or its appointed agent shall ensure that notification of the application of federal tax laws to per capita payments authorized by this Plan be made when such payments are made. The Tribal Council or its appointed agent shall also implement a procedure by which qualified tribal members who receive per capita payments shall have applicable taxes automatically deducted from per capita payments, in accordance with 25 C.F.R. §290.12(5), 26 C.F.R. part 31, and 26 U.S.C. §3402(r).

(F) Judgements for Amounts Owed the Tribe. The Stockbridge-Munsee Tribe may, in its discretion, determine that the per capita distribution may be withheld for payment to the Tribe for amounts due the Tribe and established by a court of competent jurisdiction by judgement with any remaining funds being distributed to the individual. Said withholding may be done by voluntary consent of the debtor or by order of a court of competent jurisdiction, even if the debtor chooses not to accept the per capita payment. In any event, all funds withheld shall be reported to the appropriate taxing authority as income for purposes of federal taxation.

(G) Judgments for Amounts for Child Support. The Stockbridge-Munsee Tribe must withhold Tribal Court ordered child support, as provided for in Chapter 28, so long as the amount withheld does not exceed 50% of the per capita payment. Said withholding may be done by voluntary consent of the debtor or by order of a court of competent jurisdiction, even if the debtor chooses not to accept the per capita payment. In any event, all funds withheld shall be reported to the appropriate taxing authority as income for purposes of federal taxation.

(1) If the Tribal member has multiple obligations to Section 27.7(F) and for child support pursuant to Section 27.7(G), then the following table shall be utilized:

(a) No more than 50% of the per capita payment can be applied to amounts owed for child support regardless of the number child support orders. If there are more

than one child support order, than the 50% of the per capita should be apportioned equally among the child support orders.

(b) Except for the limitation contained in Section 27.7(G)(1)(a), there are no limitations on the percentage that maybe withheld for amounts owed pursuant to Section 27.7(F).

Section 27.8 Severability.

If any section, or any part thereof, of this Plan or the application thereof to any party, person, or entity or, in any circumstances, shall be held invalid for any reason whatsoever by a court of competent jurisdiction, or by the Department of the Interior, the remainder of the section, or part of this Plan shall not be affected thereby and shall remain in full force and effect as though no section, or part thereof, has been declared to be invalid.

Section 27.9 No Waiver of Sovereign Immunity.

Nothing in this Plan shall provide or be interpreted to provide a waiver of the Stockbridge-Munsee Community or any of its governmental officers' and/or agents' sovereign immunity from suit. The Tribal Council shall be the sole, exclusive forum for any and all disputes arising under this Chapter.

Section 27.10 Amendment or Repeal of Plan.

This Plan, and any section, part, and word thereof, may be amended or repealed only by a majority vote of the Tribal Council in accordance with the provisions of the Stockbridge-Munsee Tribal Constitution.

Section 27.11 Automatic Readoption If No Plan for Subsequent Fiscal Year.

If no Revenue Allocation Plan is prepared for the subsequent fiscal year, the terms of this Plan shall automatically be adopted, without any further Tribal Council action, to govern the allocation of net gaming revenues for the subsequent fiscal year.

Section 27.12 Effective Date.

(A) This Plan governs the distribution of any and all net gaming revenues occurring in fiscal year 1995, which begins on October 1, 1994 and which ends on September 30, 1995. This Plan becomes effective upon adoption by the Tribal Council pursuant to resolution and approval by the Area Director of the Bureau of Indian Affairs in accordance with the United States Department of Interior's "Guidelines to Govern the Review and Approval of Per Capita Payments," dated December 21, 1992, IGRA, and all other applicable federal law. Following the receipt of all necessary approvals, this Plan shall have a retroactive effective date of October 1, 1994.

(B) Any future amendments will become effective upon adoption by Tribal Council pursuant to resolution and approval by the Appropriate Bureau Official, in accordance with 25 U.S.C. §2710(b)(3), 25 C.F.R. 290, and all other applicable federal law.

LEGISLATIVE HISTORY

1. Revenue Allocation Plan approved by Tribal Council January 17, 1995, Resolution No. 1461-95.
2. Section 27.8(F) (now 27.7(F)) amended by Resolution 1553-95 on November 7, 1995. Rejected by BIA Minneapolis on February 1, 1996.
3. Section 27.8(F) (now 27.7(F)) amended by Resolution No. 012-96, February 20, 1996. Approved by BIA Minneapolis, March 14, 1996.
4. Section 27.3(A), (A)(1), (A)(2), (C), (D), Section 27.4(A), (A)(1), (A)(2), (B)(1), (B)(2), Section 27.5(A), (A)(1), (A)(2), Section 27.6(A), (A)(1), Section 27.7, Section 27.8 [now Section 27.7] (A), (A)(1), (A)(2), (A)(3), (B), (C), (C)(1), (C)(3), (D), (E) amended by Resolution No. 038-2000 on July 10, 2000. Section 27.9 became Section 27.8, Section 27.10 became Section 27.9, Section 27.11 became Section 27.10, Section 27.12 became Section 27.11, Section 27.13 became Section 27.12 by Resolution No. 038-2000. On November 9, 2000 BIA, Indian Gaming Management (Washington DC) determines that the Revenue Allocation Plan does not comply with IGRA and 25 C.F.R. 290. Specifically, the BIA determination affects Section 27.7(B)(2), (C)(4). Further, the BIA determination states that the “plan must include and/or establish a process for dispute resolution...in accordance with 25 C.F.R. 290.12(b)(5).”
5. Sections 27.3(E), 27.7(A), (B)(2)(a)(b)(c), (C)(4)(5)(6), 27.9, 27.12(B) amended by Resolution No. 04-2201 on February 14, 2001 in order to address technical issues raised in BIA’s November 9, 2000 letter.
6. BIA, Indian Gaming Management, Washington DC approves amendments from February 14, 2001 Resolution No. 04-2201, May 25, 2001.
7. Sections 27.7(C), (C)(3); 27.7(F) amended by Tribal Council to address the trust agreement; to address encouraging students to obtain their high school diploma or G.E.D.; to address debts owed to the Tribe and the debtor declines Per Capita Payment. Section 27.7(C)(7) newly created to address the trust fund monies if the minor qualified tribal member dies before receiving the trust fund. Sections 27.7(G), (G)(1), (G)(1)(a), (G)(1)(b) newly created to permit Tribal Court ordered child support. June 1, 2004, Resolution 026-04. BIA, Indian Gaming Management, Washington DC approves amendments, July 20, 2004.